

September 16, 2002

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DANA M. SMITH
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Dana M. Smith, Executive Officer
Kenneth G. Lee, Project Manager

SUBJECT: El Morro Out-of-Area Sewer Service Agreements (OAA 02-13)

The following report is for informational purposes only and does not require formal action by the Commission.

Background

Government Code §56133 (Attachment 1) governs the extension of local government services by cities and special districts to territories located outside of their jurisdictional and/or sphere of influence boundaries. These "out-of-area" service arrangements are effectuated through agreements either between a public agency and private landowner, or between two or more public agencies. §56133 requires LAFCO approval of all such out-of-area service agreements unless specifically exempt under subdivision (e) of §56133.

On September 12, 2001, LAFCO adopted a *Policy for the Review and/or Processing of Out-Of-Area Agreements by the Executive Officer* (Attachment 2 - Exhibit "A"). That policy: (1) delegated to the Executive Officer the Commission's authority to review and approve, with or without conditions, or disapprove out-of-area-agreements pursuant to §56133; and (2) established guidelines for the review and approval or disapproval of such agreements.

El Morro Out-of-Area Sewer Service Agreements

On September 4, 2002, the Executive Officer approved LAFCO's first request for approval of an out-of-agency agreement since the adoption of the policy. (Please see Attachment 2 - Resolution No. OAA 02-13). That approval involved agreements for the extension of sewer services by the Irvine Ranch Water District ("IRWD") and Orange County Sanitation District ("OCSD") to the El Morro Elementary School site.

The school is located in the Laguna Beach Unified School District ("LBUSD"), just beyond the existing service areas, jurisdictional boundaries, and spheres of influence of both IRWD and OCSD. (See Attachment 2 - Exhibit "E" for a vicinity map.) Since its opening in the mid-1950s, the school has been operating on an aging septic system and leach field with insufficient capacity to accommodate the sanitary needs of the school's growing student population.

LBUSD has informed staff that heavy rainfall in recent years has increasingly resulted in unsanitary conditions at the school due to soil saturation and the mixing of effluence with rainwater. To address the septic system's shrinking capacity and growing health risks to the students, LBUSD established a program to more actively monitor and maintain the school's septic tanks and leach field. There remained, however, the potential health threat of an outright septic system failure. In June 2001, LBUSD passed bonds for the full conversion of the school's wastewater system to sewer and initiated discussions with the adjacent sewerage agencies, IRWD and OCSD, to begin the conversion.

On February 5, 2002, LAFCO staff met with representatives from IRWD, OCSD, LBUSD, and the California Department of Parks and Recreation to discuss options for the extension of sewer services to the school site, and potential future options of extending those same services to adjacent property owned by the State and also on septic. Based on the immediate need to address the health risks to the school's students, faculty, and staff, all parties agreed that developing out-of-area service agreements for the extension of sewer services to the site, in anticipation of annexation at a future date, would be the most expeditious and appropriate approach.

The resulting agreements approved by the Executive Officer on September 4, 2002 are as follows (Attachment 2 - Exhibits "B" and "C").

1. *Application for Service and Agreement with Irvine Ranch Water District* by LBUSD for local sewer services to the school by IRWD, subject to terms and conditions.
2. *Sewer Service Agreement* by and between OCSD and IRWD for, but not limited to:
 - a. The provision of local sewer services to the school by IRWD, including installation, operation, and maintenance of the local sewer lines and facilities from the school to OCSD's South Coast Trunk Sewer.
 - b. The connection of IRWD's collector sewer line from the school to OCSD's South Coast Trunk Sewer for transport of wastewater to OCSD's treatment facilities for treatment and disposal.
 - c. Sewer service and capital facilities capacity charges, including user fees, to be paid to OCSD by IRWD for school discharge to the South Coast Trunk Sewer.

The school's conversion to a sewer system in accordance with the above agreements is scheduled to commence later this month.

Attachments:

1. Excerpt - §56133
2. Resolution No. OAA 02-13 w/ Exhibits and Cover Letter

ATTACHMENT 1

Government Code §56133

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on January 1, 1994. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.